

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1347 of 1980

with

CRIMINAL APPEAL No 343 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

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Versus

BALCHANDBHAI LAXMANBHAI

Appearance:

1. Criminal Appeal No. 1347 of 1980

MR S.P DAVE, A.P.P. for the appellant.
MS HANSA B PUNANI for Respondent.

2. Criminal AppealNo 343 of 1981

MR MG NAGARKAR for Petitioner
MS HANSA B PUNANI for Respondent No. 1
MS SP DAVE, A.P.P. for respondent no. 2.

CORAM : MR.JUSTICE M.S.PARIKH

ORAL JUDGEMENT

Respondent Balchandbhai Laxmanbhai, referred to hereinafter as the accused, came to be charged with the offence punishable u/s 7 of the Prevention of Food Adulteration, 1954 (for short "the Act") in Summary Case No. 51/79 in the Court of the Metropolitan Magistrate, Court No.8, Ahmedabad, who by his impugned judgment and order dated 26th May, 1980 acquitted the accused of the offences charged against him by giving him the benefit of doubt. The State of Gujarat has preferred Criminal Appeal No. 1347/80 and the complainant - Food Inspector has preferred Criminal Appeal No.343 of 1981 against the said judgment and order.

2. It so happened that at about 5-45 p.m. on 21st September, 1979 the complainant Mr. B.M. Darji who happened to be the Food Inspector in Ahmedabad Municipal Corporation visited the accused's shop "Santosh Traders" and purchased the sample of ground nut oil for the same being examined by the Analyst. After following the procedure he prepared samples in three glass bottle and sent one of the bottles to the Public Analyst who as per his Report exh. 14. found that the sample did not conform to the prescribed standard. He, therefore, filed the complaint before the learned Magistrate. After recording the evidence adduced by the prosecution the learned Magistrate acquitted the accused of the offences charged against him, firstly on the ground that the number of the sample sent by the complainant and the number of the sample examined by the Public Analyst was different and therefore the findings of the Public Analyst could not be attributed to the accused beyond reasonable doubt. He also acquitted the accused of the offences charged against him on the ground that the sample of the ground nut oil was in three different bottles which were kept blank to the extent of 3/4 portion thereof leaving room for deterioration of standard/value of the ground nut oil by passage of time on account of air contents of the blank space in the bottle and on account of exposure of the bottle to the light.

3. In these appeals learned A.P.P. appearing for the State and learned advocate appearing for the complainant submitted that there was typographical error

apparent on the face of the noting of the number of sample in the report of the analyst. In substance there was no mistake in indentifying the sample by the Public Analyst. They also submitted that there was no such passage of time as would leave deterioration in the standard. Ms Punani learned advocate appearing for the accused submitted that the evidence of the peon Maganbhai Naranbhai p.w. no. 3 would indicate that he had number of sample bottles with him for the same being delivered/handed over to the Public Analyst and the prosecution has therefore failed to establish identification of the sample attributable to the accused. According to her submission, therefore, it could not be said that this was a typographical error. She also submitted that according to the decision of this Court once it was shown before the Court that the sample bottles were empty to a large extent it should be presumed that the deterioration might have taken place so as to adversely affect the standard fixed under the Rules.

4. I have gone through the evidence of the witnesses examined on behalf of the prosecution. It is true that the peon who accompanied the complainant and delivered the samples to the Public Analyst has in terms admitted that he had number of bottles in the bag which he had with him. This would indicate that he had number of samples to be delivered or to be handed over to the Public Analyst. If that is so, the Public Analyst might have committed error of attributing the sample not meant for the accused. However, the evidence does not indicate that he had delivered all the samples from the bag to the Public Analyst. To that extent cross-examination of the witness is insufficient. The number which the complainant had stated is IV/A/2627/369 where as the number stated by the Public Analyst is IV/A/2627/269. The fact that there clearly appears to be a typographical mistake is borne out from another sample which was sent from the Court of the learned Metropolitan Magistrate at the instance of the accused who signed the relevant papers. The accused has not disputed the report of the Director of Central Food Laboratory appearing at exh. 14. This would reveal that there is apparent typographical error in stating the number by the Public Analyst. The result is that the finding of the learned Metropolitan Magistrate on the question of the sample being not the same as attributable to the accused is required to be reversed. I am satisfied that the report of the Public Analyst exh. 14 relates to the accused there being typographical error in stating the number in

the report.

5. The learned Magistrate, however, has acquitted the accused on the ground that the sample bottles were left empty to the extent of 3/4 portion thereof or 2/3 portion thereof which would leave the scope for deterioration in the standard/value on account of air contents of the bottles as also on account of light adversely affecting the standard. Ms Punani learned advocate appearing for the accused has supported the finding of acquittal on the basis of the decision of this Court in the case of Narendrakumar and Ors. Vs. Rajnikant Manilal Shah, in Criminal Appeal No. 283/1978 (Coram: R.C. Mankad, J.). She has also relied upon the decision of this Court in the case of M.K. Srimali Vs. Ladharam Dolatram and another decided on 16th July, 1990 (Coram : N.J. Pandya, J.) in Criminal Appeal No. 220/82. In the last mentioned decision reference has also been made to the earlier decision referred to by the learned Magistrate. This Court has reproduced the observations of the authors Mr. Agrawal and Mr. Sharma on Scientific Treatise entitled "Manual of Milk Inspection". The said observations might also be noted here.

"These samples should be packed in clean, dry air tight containers preferably of glass. This sample container should be almost but not quite filled, a little air space must be allowed, at the top for expansion on the other hand this space must not be too large as air exerts a detrimental action."

6. In my opinion, there is no reason for this Court to differ from the decision referred to on behalf of the accused particularly when two reports at exh.14 and 4 evince the aforesaid proposition inasmuch as there is marked difference between the findings of the two Analysts which would show deterioration by passage of time. The Public Analyst speaks about readings which are higher than the reading expressed by the Director of Central Food Laboratory. There is time gap of 2 to 3 months between the examination of the samples by the two experts. This would reflect that the standards would get adversely affected by passage of time when the samples are stored contrary to the aforesaid guide lines. Besides, the prosecution has not placed on record the evidence about the accused having purchased sealed oil

tin from the wholesale dealer. The prosecution has also not placed the evidence on record to show for how much period the ground nut oil contained in the sealed tin remained with the accused during the course of retail sale undertaken by him. Under such circumstances, the learned Magistrate has rightly given the benefit of doubt to the accused, on the basis of the sample bottles having been left blank to a large extent. In that view of the matter, learned Magistrate has rightly relied upon the decision of this Court referred to in the judgment of acquittal.

7. No other point has been canvassed in these appeals. In the facts of the case, following order is passed.

Both these appeals are dismissed.

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